

taken by the grant applicant or recipient to comply with the requirements of paragraph (c)(1) of this section. The grant applicant or recipient shall have the burden of demonstrating that it has satisfied the requirements of paragraph (c)(1) of this section. Restoration to eligibility may be conditioned upon the grant applicant or recipient entering into a consent decree. While proceedings under this section are pending, sanctions imposed by the Final Decision and Order under paragraphs (b) (1) and (2) of this section shall remain in effect.

(3) The Director shall issue a written decision on the petition for restoration.

(i) If the Director determines that the requirements of paragraph (c)(1) of this section have not been satisfied, he or she shall issue a decision denying the petition.

(ii) Within 30 days of its receipt of the Director's decision, the recipient or grant applicant may file a petition for review of the decision by the Secretary, setting forth the grounds for its objection to the Director's decision.

(iii) The petition shall be served on the Director and on the Office of the Solicitor, Civil Rights Division.

(iv) The Director may file a response to the petition within 14 days.

(v) The Secretary shall issue the final agency decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

§ 34.53 Suspension, termination, denial or discontinuance of Federal financial assistance under JTPA; alternate funds disbursal procedure.

(a) Any action to suspend, terminate, deny or discontinue Federal financial assistance under JTPA shall be limited to the particular political entity, or part thereof or other recipient (or grant applicant) as to which the finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the non-compliance has been found. No order suspending, terminating, denying or discontinuing Federal financial assistance under JTPA shall become effective until:

(1) The Director has issued a Final Determination pursuant to § 34.46 or

Notification of Breach of Conciliation Agreement pursuant to § 34.48;

(2) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or pursuant to the nondiscrimination and equal opportunity provisions of JTPA or this part;

(3) A Final Decision has been issued by the Secretary, the Administrative Law Judge's decision and order has become the Final Decision of the Secretary, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Decision of the Secretary, pursuant to § 34.52(b); and

(4) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

(b) When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of JTPA.

PART 35—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Subpart A—General

Sec.

35.1 What is the purpose of the Department of Labor (DOL) age discrimination regulations?

35.2 To what programs or activities do these regulations apply?

35.3 What definitions apply to these regulations?

§ 35.1

Subpart B—Standards for Determining Age Discrimination

- 35.10 Rules against age discrimination.
- 35.11 Definitions of the terms “normal operation” and “statutory objective.”
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- 35.15 Remedial action.
- 35.16 Special benefits for children and the elderly.
- 35.17 Age distinctions in DOL regulations.

Subpart C—Duties of DOL Recipients

- 35.20 General responsibilities.
- 35.21 Recipient responsibility to provide notice.
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Subpart D—Investigation, Conciliation, and Enforcement Procedures

- 35.30 Compliance reviews.
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- 35.34 Effect of agreements on enforcement effort.
- 35.35 Prohibition against intimidation or retaliation.
- 35.36 Enforcement.
- 35.37 Hearings, decisions, and post-termination proceedings.
- 35.38 Procedure for disbursement of funds to an alternate recipient.
- 35.39 Remedial action by recipient.
- 35.40 Exhaustion of administrative remedies.

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY DOL

AUTHORITY: 42 U.S.C. 6101 *et seq.*; 45 CFR Part 90.

SOURCE: 69 FR 17571, Apr. 2, 2004, unless otherwise noted.

Subpart A—General

§ 35.1 What is the purpose of the Department of Labor (DOL) age discrimination regulations?

The purpose of this part is to set out the DOL rules for implementing the

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Age Discrimination Act of 1975, as amended. The Act prohibits discrimination on the basis of age by recipients of Federal financial assistance and in federally assisted programs or activities, but permits the use of certain age distinctions and factors other than age that meet the requirements of the Act and this part.

§ 35.2 To what programs or activities do these regulations apply?

(a) *Application.* This part applies to any program or activity that receives Federal financial assistance, directly or indirectly, from DOL.

(b) *Limitation of application.* This part does not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body that:

(i) Provides persons with any benefits or assistance based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprentice training program.

§ 35.3 What definitions apply to these regulations?

As used in this part:

Act means the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*).

Action means any act, activity, policy, rule, standard, or method of administration, or the use of any policy, rule, standard, or method of administration.

Age means how old a person is, or the number of years from the date of a person's birth.

Age distinction means any action using age or an age-related term.

Age-related term means a word or words that necessarily imply a particular age or range of ages (*e.g.*, “child,” “adults,” “older persons,” but not “student”).

Applicant for Federal financial assistance means the individual or entity submitting an application, request, or